THE BOMBAY HINDU DIVORCE ACT, 1947.

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BOMBAY ACT No. XXII OF 1947.[1]

[THE BOMBAY HINDU DIVORCE ACT, 1947.]

[*12th May 1947.*]

Amended by Bom. 31 of 1949.

An Act to provide for a right of divorce among all communities of Hindus in certain circumstances.

WHEREAS it is expedient to provide for a right of divorce among all communities of Hindus in certain circumstances; It is hereby enacted as follows:—

Short title and extent.

1. (*1*) This Act may be called the Bombay Hindu Divorce Act, 1947.

(*2*) It extends to the whole of the Province of Bombay.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

(*a*) "Court" means in Greater Bombay, the High Court in its ordinary original civil jurisdiction and elsewhere, the Court of a District Judge;

(*b*) "desert" means to desert without reasonable cause and without the consent or against the will of the spouse;

(*c*) "Hindu" includes a Sikh, Jain, Budhist, a follower of the Arya or Bramha Samaj or a convert to Hindusim;

(*d*) "husband" means a Hindu husband;

(*e*) "marriage" means a marriage between Hindus whether contracted before or after the coming into operation of this Act;

(*f*) "wife" means a Hindu wife.

Grounds for divorce.

3. (*1*) A husband or wife may sue for divorce on any of the following grounds namely:—

(*a*) that the defendant was impotent at the time of the marriage and continues to be so at the time of the institution of the suit;

(*b*) that the defendant has been a lunatic for a period of not less than seven years before the institution of the suit or is an idiot;

(*c*) that the defendant has been suffering from leprosy not contracted from the plaintiff for a period of not less than seven years before the institution of the suit;

(*d*) that the defendant has deserted the plaintiff for a continuous period of four years;

(*e*) that the defendant has not been heard of as being alive for the space of seven years by those persons who would have naturally heard of it had the defendant been alive;

(*f*) that the defendant, if a husband, has any other woman as a concubine, and if a wife, is a concubine of any other man or leads the life of a prostitute:

Provided that no such suit shall lie, except under clause (*d*) or (*f*), if the husband and wife have lived a married life for 20 years after attaining majority.

(*2*) A wife may also sue for divorce on the ground that her husband had married again before the coming into operation of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, and such wife is living at the time of the institution of the suit.

Bom. XXV of 1946.

[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1947, Pt. V, page 79; for Proceedings in Assembly, *see* Bombay Legislative Assembly Debates, 1947, Vol. X; and for Proceedings in Council, *see* Bombay Legislative Council Debates, 1947, Vol. XII.

Suits for judicial separation.

4. Notwithstanding anything contained in section 3—

(*1*) a husband or wife may sue for judicial separation on the ground that the spouse is suffering from leprosy not contracted from the plaintiff,

(*2*) a husband may sue for judicial separation on the ground that his wife is a concubine of any other man or leads the life of a prostitute,

(*3*) a wife may sue for judicial separation—

(*a*) on the ground that her husband had married again before the coming into operation of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, and such wife is living at the time of the institution of the suit, or Bom. XXV of 1946.

(*b*) on the ground that her husband has any other woman as a concubine, or

(*c*) on the ground of legal cruelty.

Necessary parties in suits for divorce and judicial separation.

[1][**4A.** (*1*) Unless the Court otherwise orders, in every suit for divorce or judicial separation in which the defendant if a husband is alleged to have any other woman as a concubine, or if a wife is alleged to have been a concubine of any other man, the other woman or the other man, as the case may be, shall be a necessary party.

(*2*) In any suit in which such other man is a party, the Court may direct him to pay the whole or any part of the costs of the suit.]

Courts in which suits to be instituted.

5. (*1*) Every suit under this Act shall be instituted in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

(*2*) Where the defendant shall at such time have left the Province or his whereabouts are unknown such suit shall be instituted in the Court at the place where the plaintiff and defendant last resided together.

(*3*) In any case, whether the defendant resides in the Province or not, such suit may be brought in the Court at the place where the plaintiff resides or at the place where the plaintiff and the defendant last resided together, if such court, after recording its reasons, grants leave so to do.

Alimony *pendente lite.*

6. In any suit under this Act if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife, may order the husband to pay her the expenses of the suit, and monthly during the suit such sum not exceeding one-fifth of her husband's net income as the Court, considering the circumstances of the parties, shall think reasonable.

Decrees in suit.

7. In any suit under section 3 or 4 whether defended or not, if the Court be satisfied that any of the grounds set forth in either of those sections for granting relief exist, the Court shall decree such relief accordingly.

Permanent alimony.

8. (*1*) If the Court thinks fit, it may, at the time of passing any decree under this Act or subsequent thereto, on application made to it for the purpose, order that the husband shall, while the wife remains chaste and unmarried, secure to the wife, for her maintenance and support, if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a term not not exceeding her life as, having regard to her own property, if any, her husband's property and the conduct of the parties, shall be deemed just.

(*2*) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (*1*), it may at the instance of either party vary, modify or rescind such order in such manner as the Court may deem just.

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[1] This section was inserted by Bom. 31 of 1949, s. 2.

(*3*) If the Court is satisfied that the wife in whose favour an order has been made under sub-section (*1*) or (*2*) has remarried or has not remained chaste, it shall vary or rescind the order.

Payment of alimony to wife or to her trustee.

9. In all cases in which the Court shall make any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the Court expedient so to do.

Disposal of joint property.

10. In any suit under this Act, the Court may make such provisions in the decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife.

Suits may be heard with closed doors.

11. A suit under this Act shall be tried with closed doors at the instance of either party or if the Court thinks fit.

Provisions of Civil Procedure Code to apply to suits under this Act.

V of 1908.

12. Save as herein otherwise provided, the provisions of the Code of Civil Procedure, 1908, shall, so far as may be, apply to all proceedings instituted under this Act including proceedings in execution and orders subsequent to decree.

Enforcement of an appeal from orders and decrees.

13. All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the law for the time being in force :

No appeal as to costs.

Provided that there shall be no appeal on the subject of costs only :

Provided further that such appeal shall be instituted within three calendar months after the decision appealed from shall have been pronounced.

Liberty to parties to marry again.

14. When the time for an appeal against any decree granting a divorce shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal a divorce has been granted and six months have elapsed thereafter but not sooner, it shall be lawful for the parties thereto to marry again, as if the prior marriage had been terminated by death.

Custody of children.

15. In any suit under this Act, the Court may from time to time pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, the marriage of whose parents is the subject of such suit, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary from time to time all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the suit for obtaining such decree were still pending.

Rules.

16. The Provincial Government may by notification in the Official Gazette, and subject to the condition of previous publication, make rules for the purpose of carrying into effect the provisions of this Act.

Saving.

17. Nothing contained in this Act—

(*1*) shall apply to Hindus marrying under the provisions of the Special Marriage Act, 1872 ; or

III of 1872.

(*2*) shall affect any right of divorce or judicial separation recognised by custom.